

CHAPTER 20.89

ALCOHOLIC BEVERAGE OUTLETS

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20.89.010 Purpose

The purpose of this chapter is to preserve a healthy environment for residents and businesses by establishing a set of consistent standards for the safe operation of alcoholic beverage retail outlets. It is recognized that hospitality, entertainment, recreation and related businesses are a significant part of the City's economy, and that alcoholic beverage sales are important to the operation of these businesses. It is also recognized that alcohol abuse can create environments which jeopardize the continued success of these businesses and seriously affect the health, safety and general welfare in surrounding areas, particularly residential neighborhoods.

This chapter is intended to prevent alcohol-related problems, including, but not limited to, driving under the influence, assaults, domestic violence, public inebriation, littering, loitering, obstruction of pedestrian traffic, noise, traffic violations, illegal parking, interference with children on their way to and from school, interference with shoppers using the streets and defacement and damaging of public and private property. This chapter provides a set of additional tools to reduce the costly and harmful effects of irresponsible alcohol sales and consumption on local businesses, residents, law enforcement, medical care, educational, preventive, treatment and rehabilitation resources.

20.89.020 Definitions

For the purpose of this chapter, the following words or terms shall be defined as follows:

- A. Alcoholic Beverage: A fermented or distilled beverage including alcohol, spirits, liquor, wine, beer, and every other liquid or solid containing alcohol, spirits, wine or beer which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

- B. Alcoholic Beverage Control (ABC): California State Department of Alcoholic Beverage Control.
- C. Alcoholic Beverage Outlet, Off-Sale: Any establishment wherein alcoholic beverages are sold, served, or given away for consumption off the premises and which is applying for or has obtained an ABC license type 20 or 21. References to the establishment shall include any immediately adjacent area that is owned, leased, or rented, or controlled by the permittee.
- D. Alcoholic Beverage Outlet, On-Sale. Any establishment wherein alcoholic beverages are sold, served, or given away for consumption on the premises and which is applying for or has obtained an ABC license type 40, 41, 42, 47, 48, 51, 52, 61, 63 and/or 75. References to the establishment shall include any immediately adjacent area that is owned, leased, or rented, or controlled by the permittee.

20.89.030 Use Permit Required

- A. A use permit shall be required for any new alcoholic beverage outlet and for any existing alcoholic beverage outlet meeting any of the following criteria:
 - 1. There is a substantial change in the mode or character of operation. A substantial change in mode or character of operation, includes, but is not limited to the following:
 - a. The alcoholic beverage outlet changes its type of retail liquor license with the Department of Alcoholic Beverage Control; or
 - b. The off-sale alcoholic beverage outlet increases the floor area or shelf space principally devoted to alcohol sales by 25 percent of more; or
 - c. The on-sale alcoholic beverage outlet increases the floor area principally devoted to alcohol sales by more than 250 square feet; or
 - d. The alcoholic beverage outlet proposes to reinstate alcohol sales after the ABC license has been revoked or suspended for a period greater than 30 days by the ABC.
 - 2. A finding is made by the Planning Commission, or the Planning Director, as the case may be, that the existing alcoholic beverage outlet is operated or maintained under objectionable conditions as provided herein after that constitute a public nuisance. However, in no case shall the Planning Commission, or the Planning Director, as the case may be, make this

finding until the owner and/or operator of the alcoholic beverage outlet has been notified of the objectionable conditions and allowed a minimum of 30 days to correct these conditions. The Planning Commission, or the Planning Director, as the case may be, shall include in the notice a list of recommended actions deemed necessary to correct the objectionable conditions.

As used in this chapter, objectionable conditions which constitute a public nuisance shall mean repeated instances of conduct or conditions which adversely impact the public health safety and welfare and which are directly related to the operation of the alcoholic beverage outlet such as a pattern of documented violations of ABC and local laws, a pattern of documented violations of the Newport Beach Municipal Code, the Penal Code or other State statutes, or a pattern of substantiated complaints of activity constituting evidence of a nuisance.

- B. Required Findings. In order to approve a use permit for an alcoholic beverage outlet, the Planning Commission, or the Planning Director, as the case may be, shall find that the proposed use is consistent with the purpose and intent of this chapter, in addition to the findings required by Section 20.91.035. In making the required findings, the Planning Commission, or the Planning Director, as the case may be, shall consider the following:
1. Whether the use serves public convenience or necessity.
 2. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.
 3. The number of alcohol licenses per capita in the reporting district and in adjacent reporting districts as compared to the county-wide average.
 4. The numbers of alcohol-related calls for service, crimes or arrests in the reporting district and in adjacent reporting districts.
 5. The proximity of the alcoholic beverage outlet to residential districts, day care centers, park and recreation facilities, places of religious assembly, and schools.

20.89.040 Authority

The Planning Commission shall approve, conditionally approve, or disapprove applications for use permits for alcoholic beverage outlets.

Exception. The Planning Director shall have the authority to render decisions on use permits for food and beverage sales establishments totaling more than 10,000 square feet with no more than 10 percent of the gross floor area devoted to alcohol sales and display and for any other off-sale establishment that is applying for or has obtained an ABC license that is limited to the sale of beer and wine only.

20.89.050 Development and Operational Regulations

- A. Applicability. The regulations of Section 20.89.050 (B) shall apply to all off-sale alcoholic beverage outlets. The regulations in Section 20.89.050 (C) shall apply to any new alcoholic beverage outlet and to any existing alcoholic beverage outlet meeting any of the criteria specified in Section 20.89.030 (A).
- B. Sale and Storage. Off-sale alcoholic beverage outlets shall be prohibited from selling or storing alcoholic beverages outside of the exterior walls of the establishment from 12:01 a.m. on July 4th to 3:00 a.m. on July 5th each year.
- C. Development and Operational Regulations.
 - 1. Signs and Displays.
 - a. Signs and displays in off-sale alcoholic beverage outlets shall not obstruct the sales counter, cash register, seller and customer from view from the exterior.
 - b. Loitering, open container, and other signs specified by the Alcoholic Beverage Control Act shall be posted as required by the ABC.
 - 2. Drinking Alcohol Outside.
 - a. The selling of alcoholic beverages for consumption outside the building shall be prohibited.

Exception: The provision shall not apply to Eating and Drinking Establishments with approved outdoor or sidewalk cafe dining.

3. Nuisances. Reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the alcoholic beverage outlet and adjacent properties must be taken during business hours if directly related to the patrons of the subject alcoholic beverage outlet. "Reasonable steps" shall include calling the police in a timely manner; preventive design features (see Section 20.89.050 (B-6) below); and requesting those engaging in such activities to cease those activities, unless personal safety would be threatened in making that request.
4. Hours of Operation. The Planning Commission, or the Planning Director, as the case may be, may restrict the hours of operation of the alcoholic beverage outlet.
5. Mode of Sale. Alcoholic beverage sales from drive-up or walk-up service windows shall be prohibited. This provision shall also apply to alcoholic beverage sales to persons in watercraft.
6. Preventive Design. The site plan and floor plan of all alcoholic beverage outlets shall be reviewed for opportunities to incorporate design features to assist in reducing alcohol-related problems. The Planning Commission, or the Planning Director, as the case may be, may condition the alcoholic beverage outlet to incorporate preventive design features. Such features may include, but are not limited to, openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.
7. Security. The Planning Commission, or the Planning Director, as the case may be, may require the alcoholic beverage outlet to provide adequate security personnel and/or devices.
8. Litter and Graffiti. The exterior of the alcoholic beverage outlet, including all signs and accessory buildings and structures, shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
9. Responsible Beverage Service/Sales Training Requirements.
 - a. Required Training. All owners, managers and employees serving and/or selling alcoholic beverages in alcoholic beverage outlets undergo and successfully complete a certified training program in

responsible methods and skills for serving and selling alcoholic beverages.

- b. When Required. Responsible Beverage service and sales training shall be required for all new alcoholic beverage outlets and for any existing alcoholic beverage outlet upon a finding of the Planning Commission, or the Planning Director, as the case may be, that the establishment is operated or maintained under objectionable conditions that constitute a public nuisance.
- c. Certified Programs. To qualify to meet the requirements of this section a certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service (CCC/RBS) or other certifying/licensing body which the State may designate.
- d. Timetable for Compliance. New alcoholic beverage outlets shall comply with the requirements of this section within 180 consecutive days of the issuance of the certificate of occupancy. Existing alcoholic beverage outlets shall comply with the requirements of this section within 180 days of the effective date of the use permit.
- e. Records. Records of each owner's, manager's and employee's successful completion of the certified training program required by this section shall be maintained on the premises of the alcoholic beverage outlet and shall be presented upon request by a representative of the City of Newport Beach.
- f. Waiver. The Planning Commission, or the Planning Director, as the case may be, may waive or modify all or part of the requirements of this section upon finding that the employees of the alcoholic beverage outlet are sufficiently knowledgeable in the responsible methods and skills for serving and selling alcoholic beverage training.

20.89.060 Expiration, Violation, Discontinuance, and Revocation

- A. Expiration. Any use permit for an alcoholic beverage outlet granted in accordance with the terms of this chapter shall expire within 12 months from the date of approval unless a license has been issued or transferred by the California State Department of Alcoholic Beverage Control prior to the expiration date.

- B. Time Extension. The Planning Commission, or the Planning Director, as the case may be, may grant a time extension for a use permit for an alcoholic beverage outlet for a period or periods not to exceed 12 months. An application for a time extension shall be made in writing to the Planning Director no less than 30 days or more than 90 days prior to the expiration date.
- C. Violation of terms. The Planning Commission, or the Planning Director, as the case may be, may revoke a use permit for an alcoholic beverage outlet upon making one or more of the following findings:
1. That the permit was issued on the basis of erroneous or misleading information or misrepresentation.
 2. That the terms or conditions of approval of the permit have been violated or that other laws or regulations have been violated.
 3. The establishment for which the permit was issued is being operated in an illegal or disorderly manner.
 4. Noise from the establishment for which the permit was issued violates the Community Noise Control Ordinance (Chapter 10.26 of the Municipal Code).
 5. The business or establishment for which the permit was issued has had or is having an adverse impact on the health, safety or welfare of the neighborhood or the general public.
 6. There is a violation of or failure to maintain a valid ABC license.
 7. The business or establishment fails to fully comply with all the rules, regulations and orders of the California State Department of Alcoholic Beverage Control.
- D. Discontinuance. A use permit for an alcoholic beverage outlet shall lapse if the use is discontinued for 90 consecutive days or if the ABC license for the establishment has been revoked or transferred to a different location.
- E. Revocation. Procedures for revocation shall be as prescribed by Chapter 20.96: Enforcement.

20.89.070 Rights of Appeal

- A. Appeals. Decisions of the Planning Director may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the City Council.
- B. Procedures. Procedures for appeals shall be as prescribed by Chapter 20.95: Appeals.